TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 1061

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR

vs.

JOHN RAMSEY AND WILLIAM K. HALE

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

FILED MARCH 22, 1926

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[Citation in usual form showing service on Freeburg & Howard and J. N. Springer; filed March 2, 1926, omitted in printing.]

In United States District Court

Writ of error and return filed March 2, 1926, Western District of Oklahoma

The President of the United States of America, to the Honorable Judges of the District Court of the United States for the Western District of Oklahoma, greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, at the special January term, 1926, thereof, between the United States of America, plaintiff, versus John Ramsey and Wm. K. Hale, defendants, Case No. 5728, criminal, a manifest error hath happened, to the great damage of the said United States of America as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of United States, Washington, District of Columbia, together with this writ, so that you have the said record and proceedings aforesaid at Washington, District of Columbia, and filed in the office of the clerk of the United States Supreme Court, Washington, D. C., on or before the 31st day of March, 1926, to the end that the record and proceedings aforesaid being inspected, the United States Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable William H. Taft, Chief Justice of the United States, this 2nd day of March, in the year of our Lord one thousand nine hundred twenty-six.

Issued at office in Oklahoma City, Oklahoma, with the seal of the District Court of the United States for the Western District of Oklahoma and dated as aforesaid.

[SEAL.] HARRY L. FINLEY,
Clerk of the District Court of the United States,
Western District of Oklahoma.

Allowed by
JOHN H. COTTERAL, *Judge.*

United States of America,
Western District of Oklahoma, ss:

In obedience to the command of the within writ, I herewith transmit to the United States Circuit Court of Appeals a duly certified

transcript of the record and proceedings in the within-entitled case, with all things concerning the same.

In witness whereof, I hereto subscribe my name and affix the seal of the District Court of the United States for the Western District of Oklahoma.

[SEAL.] HARRY L. FINLEY,
Clerk of the District Court of the United States,
Western District of Oklahoma.

[File indorsement omitted.]

3 In United States District Court

Cause No. 5728

Bill of indictment

Filed Feb. 13, 1926

WESTERN DISTRICT OF OKLAHOMA, *ss:*

The grand jurors for the United States of America empaneled and sworn in the District Court of the United States for the Western District of Oklahoma at the January term of said court in the year 1926, held at Guthrie, and inquiring for said district, upon their oath present, that John Ramsey, a white person, late of said district, on February 6, 1923, in Osage County, in said district, in the Indian country and in and upon the reservation theretofore and then established by law of the United States for the Osage Tribe of Indians, on and in a certain tract of land therein which was then and there under the executive jurisdiction of the United States and comprised a restricted surplus allotment, theretofore made under and according to the act of Congress approved June 28, 1906, and entitled "An act for the division of the lands and funds of the Osage Indians in Oklahoma Territory, and for other purposes," of a full-blood Osage Indian, to wit, of one Rose Little Star, whose Indian name then was Tom-pah-pe, and who then was a legal member of said Osage Tribe of Indians, enrolled, under the number 197, upon the roll of said tribe authorized in and by said act of Congress, the title to which said allotment then, to wit, on said February 6, 1923, was held in trust by the United States and was inalienable by said Rose Little Star and which said allotment remained unsold, unalienated, and undisposed of by said Rose Little Star, and, by reason of the fact, which the grand jurors aforesaid, upon their oath aforesaid, charge to be a fact, that said Rose Little Star never
4 has had issued to her by the Secretary of the Interior of the United States a certificate of competency authorizing her to sell any of the lands deeded to her by reason of said act of Congress, and by reason of the fact, which the grand jurors aforesaid, upon their oath aforesaid, charge to be a fact, that no sale of said allot-

ment has ever been permitted, made, or consented to by said Secretary of the Interior, and also by reason of the trust relationship and wardship which then existed between the United States and the members of said tribe, including said Rose Little Star, the alienability and extinguishment of the title of said Rose Little Star to which said allotment then still was a matter under the exclusive control of the United States and said Secretary of the Interior—that is to say, on and in the tract of land known and described as the east half of the southwest quarter of section thirty-four, in township twenty-five north, and range five east, reference being had to the Indian meridian and its base line, it being allotment numbered 188 on said roll, and at a point on and in said tract of land situated about four miles in a northwesterly direction from Fairfax, in said State, county, and district, unlawfully, feloniously, willfully, deliberately, maliciously, and premeditatedly, with malice aforethought, then and there on the part of him, the said John Ramsey, with force and arms, an assault did make upon one Henry Roan, who then and there was a full-blood Osage Indian and a legal member of said Osage Tribe, enrolled upon said roll under number 762, and a certain deadly weapon, to wit, a pistol, which then and there was loaded with gunpowder and leaden bullets and by him, the said John Ramsey held in his hands, then and there unlawfully, feloniously, willfully, deliberately, maliciously, and premeditatedly, and with malice aforethought on the part of him, the said John Ramsey, did shoot off and discharge to, against, and upon said Henry Roan, and that said John Ramsey, with one of the leaden bullets aforesaid, out of the pistol aforesaid, then and there, by force of the gunpowder aforesaid, unlawfully, feloniously, willfully, deliberately, maliciously, and premeditatedly, and with malice aforethought, then and there on the part of said John Ramsey, did strike, penetrate, and wound him, the said Henry Roan, in and upon the left side of the head of him, the said Henry Roan, giving to him, the said Henry Roan, then and there, with said leaden bullet, so as aforesaid discharged and shot out of the pistol aforesaid by him, the said John Ramsey, in and upon the left side of the head of him, the said Henry Roan, one mortal wound, of which said mortal wound the said Henry Roan then and there instantly died; and that William K. Hale, a white person, late of said district, then and there unlawfully, feloniously, willfully, deliberately, maliciously, and premeditatedly, and with malice aforethought on his part, did aid, abet, counsel, command, and procure the said John Ramsey in so doing and so to do.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that said John Ramsey and said William K. Hale, at the time and place, in manner and form, and by the means, aforesaid, unlawfully and feloniously, by a kind of willful, deliberate, malicious, and premeditated killing, and with malice aforethought, the said Henry

Roan willfully did kill and murder, against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

ROY ST. LEWIS,
United States Attorney.

OSCAR R. LUHRING,
Assistant Attorney General.
EDWIN BROWN,
OLIVER E. PAGAN, and
PAUL B. BAILEY,
Special Assistants to the Attorney General.
[File indorsement omitted.]

6 In United States District Court

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* JOHN RAMSEY, DEFENDANT.	No. 5728

Demurrer of defendant John Ramsey

Filed Feb. 15, 1926

Comes now the defendant, John Ramsey, defendant in the above-entitled cause, and demurs to the indictment returned against him in the above numbered and entitled cause, and for his separate demurrer to said indictment, says:

1. That said indictment shows upon its face that this court has no jurisdiction of the subject matter of said indictment or of the person of this defendant.

2. That said indictment does not charge nor plead any facts which, if proven, would give the court jurisdiction either of the subject matter of the said indictment or of the person of the defendant, or of the offense sought to be alleged in said indictment.

3. The said indictment does not plead nor allege any facts which constitute an offense against the laws of the United States.

4. That said indictment shows upon its face that if any offense is charged in said indictment against this defendant that the same constitutes an offense against the laws of the State of Oklahoma, and that under the laws of the United States and under the Constitution of the United States this court has no jurisdiction thereof.

Of this the said defendant prays the judgment of the court.

J. M. SPRINGER,
Attorney for Defendant.

[File indorsement omitted.]

7 In United States District Court

No. 5728

[Title omitted.]

Demurrer of defendant William K. Hale

Filed Feb. 15, 1926

Comes now the defendant, William K. Hale defendant in the above-entitled cause, and demurs to the indictment returned against him in the above numbered and entitled cause, and for his separate demurrer to said indictment, says:

1. That said indictment shows upon its face that this court has no jurisdiction of the subject matter of said indictment or of the person of this defendant.

2. That said indictment does not charge nor plead any facts which, if proven, would give this court jurisdiction either of the subject matter of the said indictment or of the person of the defendant, or of the offense sought to be alleged in said indictment.

3. The said indictment does not plead nor allege any facts which constitute an offense against the laws of the United States.

4. That said indictment shows upon its face that if any offense is charged in said indictment against this defendant that the same constitutes an offense against the laws of the State of Oklahoma, and that under the laws of the United States, and under the Constitution of the United States this court has no jurisdiction thereof.

Of this the said defendant prays the judgment of the court.

GRIMSTEAD, SCOTT, HAMILTON & GROSS,
FREELING & HOWARD,
Attorneys for Defendant.

[File indorsement omitted.]

8 In United States District Court

No. 5728

[Title omitted.]

Order sustaining demurrers

Filed March 1, 1926

On this, the 1st day of March, 1926, the separate demurrers of John Ramsey and William K. Hale to the indictment herein came on for final hearing, and the court being fully advised it is

Ordered, that said demurrers be and are sustained upon the ground that section 2145 of the Revised Statutes is inapplicable to the surplus allotment of Rose Little Star, a full-blood Osage Indian allotted under an act of Congress of June 28, 1906 (34 Statutes at Large 539), and that such land is not Indian country, so as to give the Federal Government control over such a crime as alleged in the indictment.

It is thereupon ordered and adjudged that said defendants be and they are discharged herein and go hence without day.

To which order and judgment, and each of them, the plaintiff accepts; and said exceptions are duly allowed.

JOHN H. COTTERAL, *District Judge.*

[File indorsement omitted.]

In United States District Court

No. 5728

[Title omitted.]

Opinion

Filed March 1, 1926

By the COURT:

Since the demurrers were sustained to the original indictment, the defendants have been again indicted, and the facts have been fully alleged, and as far as may be, to show that the place of the offense was at the time Indian country. From the averments it appears to be surplus land allotted to Rose Little Star, an enrolled Osage Indian, and held in trust by the United States, no certificate of competency having been issued to her by the Secretary of the Interior and no sale authorized by him. Demurrers being again interposed, counsel have been indulged to present elaborate arguments and briefs upon the question of whether the allotment was Indian country, where the United States has jurisdiction over the offense.

By the opinion of this court, sustaining the former demurrers, it was held essential to jurisdiction, that the allotment was Indian country—that is, that the allotment was held in trust by the United States. That ruling is deemed to be sound and is adhered to upon the authority of Pelican v. United States, 232 U. S. 442. There the reservation was Indian country and the allotments were held to be the same, as they were reserved from the lands opened to settlement and entry and held in trust, subject to governmental control, and inalienable by the allottees. They were accordingly found to be but diminished portions of the reservation, retaining their Indian character and deriving their source from the reservation itself. The allotments were not held to be so, merely because they were inalienable, by virtue of a temporary limitation on the power of sale, for such a title is not essentially of an Indian character (Libby v. Clark, 118 U. S. 250), and the contention that it is, while ably asserted, appears to be inconsistent with the Pelican case, and it is not sustained by authority.

The same test must be applied to the Osage allotments, that is, whether the trust title by which the Osage Reservation was held by the United States (Brewer-Elliott Oil Co. vs. U. S., 260 U. S. 77 continued into the allotments.

The views of this court as to their character, heretofore entertained in advance of the corrected indictment and the further ar-

guments of counsel, must yield, if the Supreme Court has determined that the Osage allotments were not held in trust by the United States; and two of the cases which have been cited appear clearly to hold that they were not, although the question of jurisdiction was not directly involved.

The first of these cases is United States vs. Bowlby, 256 U. S. 484, where it was said, in terms, that "the allotments to the Osages and to members of the five civilized tribes were not trust but restricted allotments."

The other case is McCurdy vs. United States, 264 U. S. 484. The question was whether a surplus Osage allotment was taxable for the year 1909. Lands were taxable in the State on March 1, but the allotment deeds were executed and approved by the Secretary of the Interior later in that year. In denying the validity of the tax, the opinion necessarily sanctions the issuance of the deeds and holds that by them there was a termination of the trust character of the Osage title. It was held: "Title was in the United States on the date as of which the assessment was made, and did not pass until the execution and delivery of the deeds. The lands were not taxable while held in trust by the United States."

These cases do not leave the controversy over the title of Rose Little Star to her allotment open to original opinion by this court, but are found to exclude it. They are determinative that the allotment of Rose Little Star, for which, concededly, a deed had been issued, was not held in trust by the United States, and for this reason, although inalienable, it was not Indian country at the date of the alleged offense, wherefore, the jurisdiction of the United States was not there in force at the date of the alleged offense, but the jurisdiction had been succeeded to by the State court.

The demurrers must be and they are sustained and the indictment is set aside.

Oklahoma City, Oklahoma, March 1, 1926.

JOHN H. COTTERAL, *District Judge.*

[File indorsement omitted.]

In United States District Court

UNITED STATES OF AMERICA, PLAINTIFF vs. JOHN RAMSEY AND WILLIAM K. HALE, DEFENDANTS	No. 5660. Criminal.

Opinion

Filed Jan. 25, 1926

The indictment charges the defendant John Ramsey with the murder of John Roan, on January 31, 1923, in Osage County, Oklahoma, and the defendant William K. Hale with then and there aiding, abetting, counseling, commanding, and procuring John

Ramsey in so doing. The place of the offense is further described as the "Indian country," upon a tract of eighty acres comprising a restricted allotment of Rose Little Star (or Tom-pah-pe), a full-blood Osage Indian, a legal member of the Osage Indian Tribe, enrolled upon the roll of said tribe, as declared by the Osage Indian allotment act of June 28, 1906, remaining unsold and undisposed of by said allottee, and at a point on said allotment described by section, township, and range about four miles in a northwesterly direction from Fairfax, in said county. The victim of the alleged crime is described as a full-blooded Osage Indian, and a legal member of the Osage tribe upon the rolls thereof.

There is no claim that the essentials of the crime are not set forth as defined in section 373 of the Penal Code and in section 332 thereof which declares to be a principal one who aids or abets in the commission of an offense. The main objections are that no crime is charged against the United States, because the Federal laws against unlawful homicide were not extended to the place of this alleged crime or to the protection of Henry Roan.

Section 373 of the code defines and fixes a penalty for murder and manslaughter when committed on lands under the ex-
13 clusive jurisdiction of the United States. By section 2145, U. S. Rev. Statutes, it is provided, ". . . the general laws of the United States as to the punishment of crimes within the sole and exclusive jurisdiction of the United States . . . shall extend to the Indian country.

Controversy is now foreclosed as to the constitutional power of Congress to apply the criminal laws of the United States to a reservation in a State legally set apart for the use of an Indian tribe or to allotments carved out of it. Donnelly v. United States, 228 U. S. 243-269; U. S. vs. Pelican, 232 U. S. 442; United States v. Sutton, 215 U. S. 291. The like power rests in Congress to apply those laws to ceded lands not owned by Indians when located in such proximity that those laws are reasonably essential to their protection. Dick vs. United States, 208 U. S. 340; Perrin v. U. S., 232 U. S. 478. It is immaterial that the Indians may own their lands in fee. U. S. v. Sandoval, 231 U. S. 28. It has been directly held to be a competent exercise of that power to level a punishment against persons having the possession of intoxicating liquors in Osage County, Oklahoma, by reason of the presence of the Indians there, regardless of the title to the lands where the liquors are possessed. Browning vs. U. S., 6 Fed. (2) 801. By the same principle, Congress may apply the more important law against murder for the security of the Osage Indians. U. S. v. Pelican, supra.

There is no difficulty, therefore, in holding that Henry Roan was an Indian to whom Congress was authorized to grant such protection, or that it has done so, if the alleged crime was committed in the Indian country. He was, as alleged, an enrolled full-blood member of the Osage Tribe, and, as appears from the Osage allotment act of June 28, 1906 (34 Stat. 539), subsequent acts of Con-

gress, and the departmental regulations thereunder, the tribal organization continued, subject to departmental powers. There is an Indian agency over these Indians with a superintendent in charge; their funds, including royalties from mineral leases for 25 years and other sources, are subject to distribution by the Secretary
14 of the Interior; leases of the lands are dependent on his approval; the sale of the allotments is subject to his control, etc. And these Indians have continued to be wards of the Government, notwithstanding their citizenship and subjection to various State laws. Mosier v. U. S., 198 Fed. 54; Hallowell v. U. S., 221 U. S. 317; Tiger v. Western Investment Co., 221 U. S. 286; Browning v. United States, supra; United States v. Celestine, 215 U. S. 278; U. S. v. Pelican, supra; Perrin v. U. S. supra; United States v. Nice, 241 U. S. 591; United States v. Gray, 201 Fed. 291. And the power to protect them, being derived from the Federal Constitution, is not dependent upon a compact with the States or a reservation in the act of admission. United States v. Sandoval, supra; Coyle v. Oklahoma, 221 U. S. 559, 574; Joplin Mercantile Co. v. United States, 213 Fed. 926.

But does the indictment sufficiently charge that the allotment of Rose Little Star was "Indian country"? The terms "Indian country" and "restricted allotment" are but conclusions derived from unalleged facts. In what way and against what was it restricted? In what way was it Indian country? What the grand jury conceived to be Indian country may not be so at all. The only facts averred with descriptive certainty are, in substance, that the allotment was that of a legally enrolled full-blood member of the tribe, not sold or disposed of by the allottee. More definite facts are essential to describe the allotment as Indian country. The laws applicable thereto must be consulted to ascertain them.

The allotment act (supra) authorized the Osage tribal roll and the division of the reservation lands among the Indians, consisting of a homestead and other selections and awards, known as surplus lands. The homestead was to be inalienable until otherwise provided by Congress. Secs. 1, 2, 3. The Secretary of the Interior was empowered, upon request and petition of an adult member, to issue to him a certificate of competency, authorizing him to sell, convey, and control his surplus land, the same as any other citizen, and it would be subject to taxation, etc. Sec. 2, subd. 7. By the act of March 3, 1909 (35 Stat. 778), the Secretary was authorized,
15 upon application, to sell any or all of the surplus lands. By the act of April 18, 1912 (27 Stat. 86), the property of deceased and of minor, insane, or other incompetent allottees was made subject to the jurisdiction of the county courts, but no lands were to be sold without the approval of the Secretary. By the act of May 25, 1918 (40 Stat. 579), the Secretary was authorized to permit the sale of the surplus and homestead allotments. From this brief reference to the legislation on the subject, it is apparent that all the

allotted lands might have been freed of governmental trust and become subject to alienation and sale by the allottees.

But the indictment is so far indefinite as to the actual status of the Rose Little Star allotment—that is, whether it was so held in trust, or alienable and free of it, by virtue of a certificate of competency, or authorization of the Secretary of the Interior, or otherwise.

In the first place, the Osage Reservation was acquired from the Cherokees and was conveyed in trust for the tribe. United States v. Brewer-Elliott Oil and Gas Co., 249 Fed. 609; affirmed 270 Fed. 100, 260 U. S. 277. And it became Indian country. Brown v. United States, 146 Fed. 975. The allotments, notwithstanding the divisional deeds to the Osages, were held in trust by the United States, for it is expressly so declared by section 5 of the allotment act. And upon the authority of Pelican v. United States they constituted and remained Indian country, as long as they were not released therefrom.

That these allotments might cease to be of that character while still owned by the allottees seems clear from the decisions. In the Pelican case, the indictment specified that the allotment where the offense occurred was held in trust by the United States. This conclusion was reached by considering that as the reservation formed a part of the Indian country, the allotments still retained "during the trust period a distinctly Indian character, being devoted to Indian occupancy under the limitations imposed by Federal legislation." It was further held:

16 "The explicit provision in the act of 1897 as to allotments we do not regard as pointing a distinction but rather as emphasizing the intent of Congress in carrying out its policy with respect to allotments in severality where these have been accompanied with restrictions upon alienation or provision for trusteeship on the part of the Government. In the present case, the original reservation was Indian country simply because it had been validly set apart for the use of the Indians as such under the superintendence of the Government. Donnelly v. United States, supra. The same considerations, in substance, apply to the allotted lands, which when the reservation was diminished, were excepted from the portion restored to the public domain. The allottees were permitted to enjoy a more secure tenure and provision was made for their ultimate ownership without restrictions. But, meanwhile, the lands remained Indian lands set apart for Indians under governmental care; and we are unable to find ground for the conclusion that they became other than Indian country through the distribution into separate holdings, the Government retaining control."

From the stress thus laid upon the status of the title, where an allotment is the locus of the offense, a conclusion is necessary that Federal jurisdiction not being reserved does not extend to lands held in fee by allottees, free of governmental trust and restriction upon sale. Such title is no longer of an Indian character, and the

State laws then apply to it. The allotment of Rose Little Star would remain Indian country and therefore subject to Federal jurisdiction only if held in trust by the United States, and inalienable for want of authorization or sale by the Secretary of the Interior.

If, as counsel claim, this was a surplus allotment held in trust by the United States and thus inalienable, not being then distributed into "a separate holding" and the Government not "retaining control of it," Federal jurisdiction over the alleged crime existed. And appropriate averments should have been added that this was a surplus allotment made pursuant to the allotment act of June 28, 1906, the title thereto being then and there held in trust by the United States and inalienable by the allottee, no certificate of competency having been issued to her by the Secretary of the Interior, and no sale of said allotment having been permitted or made by the Secretary of the Interior. But there are no such averments, and as without them the allotment may have been free of the trust and subject to sale by the allottee, the indictment fails as to jurisdictional facts, showing that it was committed in the Indian country,
17 which is an essential of the offense. Louie v. United States, 254 U. S. 548. That this was meant to be alleged in due form may be assumed, but it does not sufficiently appear from the language employed in the indictment.

The test of Indian country to be applied here is not found to be whether the allottee had parted with his title independently owned by him. The cases which turn upon the title test refer to the original Indian title of tribes falling within the definition of Indian country by the act of June 30, 1834, or apply that test to lands where the tribal title has been ceded in Indian reservations. Bates v. Clark, 95 U. S. 204; Ex parte Crow Dog, 109 U. S. 556; Dick v. United States, 208 U. S. 340; Browning v. United States, 6 Fed. (2) 801; Evans v. Victor, 204 Fed. 361; Clairmont v. United States, 225 U. S. 551. An allotment owned in fee by an individual Indian free of trust and restriction is not Indian country because his title has not been extinguished.

There was a suggestion, rather than argument, as being material in opposition to the demurrers, that all of Osage County remains Indian country because by the Osage allotment act minerals underlying the lands which composed the reservation were reserved to the tribe for twenty-five years, and the Indian title thereto has not been extinguished. This view, most seriously affecting, as it must, the jurisdiction constantly exercised by the State courts, is inadmissible. It could not apply to this allotment, nor to others not appearing to contain minerals, but even if they be found or assumed to exist such a variable basis of Federal jurisdiction can not be sustained as having been contemplated by Congress. For, by freeing the land of trust and restrictions, the same measure of title passed to the allottees as to lands allotted in other reservations, where the jurisdiction of the State courts has been held to attach, as in Clairmont

vs. United States, supra. Therefore, the better and the sound rule, and the only certain and dependable standard which prevails generally, is that when the Indian holds an alienable title in fee to the surface, Federal jurisdiction, not being expressly reserved by Congress in such cases, has ceased to exist and the State courts have succeeded to the jurisdiction.

18 Whether the views of this court as to the sufficiency of the indictment are well taken, certainly a corrected indictment should be sought, if justified by the facts. The present order will be that the separate demurrers of the defendants are sustained, the indictment is set aside, for want of a sufficient averment of jurisdictional facts inhering in the offense charged as heretofore pointed out, and the cause submitted to the grand jury for its further action. Meantime, the defendants will be held by the marshal to await such action. Of course, if counsel for the Government so elect, a writ of error may be sued out from the Supreme Court, conformably to the criminal appeals act of March 2, 1907, 34 Stat. 1246.

Oklahoma City, Oklahoma, January 25, 1926.

JOHN H. COTTERAL, *District Judge.*

[File indorsement omitted.]

19 In United States District Court

No. 5728

[Title omitted.]

Petition for writ of error

Filed March 2, 1926

Now comes the United States of America, by its attorney, Roy St. Lewis, United States attorney for the Western District of Oklahoma, and complains that in the record and proceedings had in this cause, and in the judgment sustaining the defendants demurrer to the indictment found herein against said John Ramsey and William K. Hale on February 13, 1926, and dismissing said indictment, manifest error hath happened as will appear in the assignment of errors herewith submitted.

Wherefore the United States of America prays for the allowance of the writ of error and for such other errors and processes as may cause the same to be corrected by the Supreme Court of the United States.

This 2nd day of March, 1926.

ROY ST. LEWIS,
United States Attorney for the
Western District of Oklahoma.

[File indorsement omitted.]

20 In United States District Court

No. 5728

[Title omitted.]

Assignments of error

Filed March 2, 1926

The United States of America, in connection with its petition for a writ of error, makes the following assignment of errors which it avers occurred in the decision of the court herein sustaining the demurrer to the indictment found herein on February 13, 1926, against John Ramsey and William K. Hale:

One

The court erred in sustaining the separate demurrer to the indictment as filed by John Ramsey.

Two

The court erred in sustaining the separate demurrer to the indictment as filed by William K. Hale.

Three

The court erred in not overruling the separate demurrer to the indictment of John Ramsey.

Four

The court erred in not overruling the separate demurrer to the indictment of William K. Hale.

Five

The court erred in holding as a matter of law that the indictment was insufficient in law.

21 Six

The court erred in its construction of section 2145 of the Revised Statutes of the United States.

Seven

The court erred in its interpretation of said section 2145 of the Revised Statutes of the United States.

Eight

The court erred in its decision in deciding that section 2145 of the Revised Statutes is inapplicable to the lands as mentioned and set out in the indictment.

Nine

The court erred in its decision in holding and deciding that the indictment was insufficient in law to give the Federal court jurisdiction over the crime as set out in the indictment.

Ten

The court erred in its decision in holding and deciding that the allotment described in the indictment is not Indian country.

Eleven

The court erred in its decision in holding and deciding that the indictment did not charge facts sufficient to constitute an offense against the laws of the United States.

The United States, aforesaid plaintiff in error, prays that the judgment entered herein sustaining the demurrer to the indictment for the errors aforesaid, and other errors in the record and proceedings herein, may be reversed and altogether held for nothing, and that the plaintiff in error may be restored to all things that it has lost by reason of said judgment, and that the District
22 Court of the United States for the Western District of Oklahoma be directed to vacate and set aside said judgment and compel the defendants in error to plead to said indictment.

This 2nd day of March, 1926.

ROY ST. LEWIS,
United States Attorney for the Western District of Oklahoma.

[File indorsement omitted.]

23 In United States District Court

No. 5728

[Title omitted.]

Order allowing writ of error

Filed March 2, 1926

This 2nd day of March, 1926, came the United States of America, plaintiff in the above-entitled cause, by Roy St. Lewis, United States Attorney for the Western District of Oklahoma, and filed herein

and presented to the court its petition praying for the allowance of a writ of error in said cause to be urged by it, and that the transcript of the record and proceedings and papers upon which the judgment in said cause was rendered may be sent to the Supreme Court of the United States of America, and having accompanied said petition with assignment of errors, as required by law, upon consideration whereof the court does allow the writ of error.

JOHN H. COTTERAL, *Judge.*

[File indorsement omitted.]

24 In United States District Court

No. 5728

[Title omitted.]

Præcipe for transcript of record

Filed March 6, 1926

To the Clerk of said Court:

Please prepare a transcript of record in the above-entitled cause and transmit the same to the clerk, Supreme Court of the United States, Washington, D. C., and include in said transcript the following matters, to wit:

1. Indictment.
2. Separate demurrer of John Ramsey.
3. Separate demurrer of William K. Hale.
4. Order, March 1, 1926, ruling on demurrers.
5. Opinion of the court on demurrers in case No. 5728.
6. Opinion of the court on demurrers in case No. 5660.
7. Petition for writ of error.
8. Assignment of errors.
9. Order, March 2, 1926, allowing writ of error.
10. Citation.
11. Writ of error.
12. This præcipe.
13. Clerk's certificate of transcript.

The plaintiff herein elects to have the printing of said record done under the supervision of the clerk of the Supreme Court of the United States, and under the rules of said court.

ROY ST. LEWIS,
United States Attorney and Attorney for Plaintiff.

Service of the above and foregoing præcipe for record and designation as to printing acknowledged this 6 day of March, 1926.

FREELING AND HOWARD,
By S. P. FREELING,
Attorneys for Defendants.

[File indorsement omitted.]

25 [Clerk's certificate to foregoing transcript omitted in printing.]

26 In Supreme Court of the United States

Statement of points to be relied upon and designation by plaintiff in error to print the entire record

Filed March 23, 1926

The United States of America will rely on the following points in brief and in oral argument on the hearing of the writ of error, viz:

1. That the term Indian country as used in section 2145, Revised Statutes, extends to and includes surplus allotments to incompetent full-blood Osage Indians, of Osage County, Oklahoma, made pursuant to the provisions of the Osage allotment act, approved June 28, 1906. (34 Stat. L. 539.)

2. That the District Court for the Western District of Oklahoma has jurisdiction of the crime of murder committed by a white person against a full-blood Osage Indian in Osage County, Oklahoma, on or about the 6th day of February, 1923, on the surplus allotment of a full-blood Osage Indian located in said county and State.

3. That the territory, which constituted the Osage Indian Reservation in the State of Oklahoma, has not lost its character as Indian country within the meaning of section 2145, Revised Statutes, because of the fact that allotments have been made in severalty to the members of the tribe of Osage Indians pursuant to the provisions of the Osage allotment act. (34 Stat. L. 539.)

4. That the incompetent Osage Indians in Osage County in
27 the State of Oklahoma are wards of the United States, and the allotment of their tribal lands in severalty pursuant to the provisions of the Osage allotment act (34 Stat. L. 539) does not deprive them of the protection of the United States, nor affect the jurisdiction conferred by section 2145 Revised Statutes.

The plaintiff in error designates the entire transcript of the record on file to be printed.

WILLIAM D. MITCHELL,
Solicitor General.

Service of a copy of the foregoing statement of points on which the plaintiff in error will rely and of portions of the record to be printed is hereby acknowledged this — day of March, 1926.

_____ _____,
_____ _____,
_____ _____,
Counsel for Defendants in Error.

[Indorsement on cover:]

File No. 31,784. W. OKLAHOMA, D. C. U. S. Term No. 1061. The United States of America, plaintiff in error, vs. John Ramsey and William K. Hale. Filed March 22nd, 1926. File No. 31,784.

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